

)	
JUAN PEREZ,)	
)	
Plaintiff,)	C.A. No.:
)	
v.)	
)	
MERRICK BANK CORPORATION,)	
)	COMPLAINT AND DEMAND FOR
Defendant.)	JURY TRIAL
)	

JUAN PEREZ (“Plaintiff”), by and through his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against MERRICK BANK CORPORATION (“DEFENDANT”):

1. Plaintiff's Complaint is based on the Telephone Consumer Protection Act, 47 U.S.C. §227.

2. Jurisdiction of this Court arises under 28 U.S.C. § 1331. See Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

- 1 -

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

2 **PARTIES**

3 5. Plaintiff is a “person” as that term is defined by 47 U.S.C. §153(39).

4 6. Plaintiff is a natural person residing in Philadelphia, Pennsylvania
5 19124.

6 7. Defendant is a “person” as that term is defined by 47 U.S.C. §
7 153(39).

8 8. Defendant is a corporation with its principal place of business located
9 at 10705 South Jordan Gateway, Suite 200, South Jordan, Utah 84095.

10 9. Defendant acted through its agents, employees, officers, members,
11 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
12 representatives, and insurers.

13 **FACTUAL ALLEGATIONS**

14 10. Plaintiff has a cellular telephone number that he has had for at least
15 one year.

16 11. Plaintiff has only used this phone as a cellular telephone.

17 12. Beginning in October 2015 and continuing thereafter, Defendant
18 placed repeated telephone calls to Plaintiff’s cellular telephone number.

1 13. Upon information and belief, Defendant used an automatic telephone
2 dialing system, automated message and/or prerecorded voice when contacting
3 Plaintiff.
4

5 14. Plaintiff knew Defendant was using an automated telephone dialing
6 system as there was a noticeable delay before a call was transferred to a collector.
7

8 15. Defendant's telephone calls were not made for "emergency purposes;"
9 rather, Defendant was attempting to contact Plaintiff regarding an unpaid account
10 balance.
11

12 16. Furthermore, shortly after the calls began, Plaintiff informed
13 Defendant that he was unable to pay the balance, and as such, requested that
14 Defendant cease its calls to his cellular telephone regarding the matter.
15

16 17. However, Defendant continued to call Plaintiff.
17

18 18. Upon information and belief, Defendant conducts business in a
19 manner which violates the TCPA.
20

21 **DEFENDANT VIOLATED THE TELEPHONE CONSUMER**
22 **PROTECTION ACT**
23

24 19. Plaintiff incorporates the forgoing paragraphs as though the same were
25 set forth at length herein.
26

27 20. Defendant initiated multiple automated telephone calls to Plaintiff's
28 cellular telephone number.

1 21. Defendant's initiated these automated calls to Plaintiff using an
2 automatic telephone dialing system.

3 22. Defendant repeatedly placed non-emergency calls to Plaintiff's
4 cellular telephone.

5 23. Under § 227(b)(3)(A) of the TCPA, a person or entity may bring a
6 private cause of action in an appropriate court based on a violation of the TCPA or
7 the regulations prescribed under the TCPA to enjoin such violation.
8

9 24. Under § 227(b)(3)(B) of the TCPA, a person or entity may bring a
10 private cause of action in an appropriate court "to recover for actual monetary loss
11 from such a violation, or to receive \$500 in damages for each such violation
12 whichever is greater."
13

14 25. Based upon the conduct of Defendant, Plaintiff avers that the
15 enhancement of damages provided for by the TCPA allowing for Plaintiff to
16 recover up to \$1,500 per call/violation be applied to calls placed.
17

18 26. Defendant's conduct violated § 227(b)(1)(A)(iii) of the TCPA by
19 placing repeated calls using an automatic telephone dialing system to Plaintiff's
20 cellular telephone.
21

22 27. Defendant's calls to Plaintiff's cellular telephone, after he revoked
23 consent, were not made with Plaintiff's prior expressed consent.
24

1 28. Defendant's acts as described above were done with malicious,
2 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights
3 under the law and with the purpose of harassing Plaintiff.
4

5 29. The acts and/or omissions of Defendant were done unfairly,
6 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,
7 lawful right, legal defense, legal justification or legal excuse.
8

9 30. As a result of the above violations of the TCPA, Plaintiff has suffered
10 the losses and damages as set forth above entitling Plaintiff to an award of
11 statutory, actual and trebles damages.
12

13
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff, JUAN PEREZ, respectfully prays for a judgment as
16 follows:
17

- 18 a. All actual damages suffered pursuant to 47 U.S.C. §
19 227(b)(3)(A);
- 20 b. Statutory damages of \$500.00 per violative telephone call
21 pursuant to 47 U.S.C. § 227(b)(3)(B);
- 22 c. Treble damages of \$1,500.00 per violative telephone call
23 pursuant to 47 U.S.C. §227(b)(3);
- 24 d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3); and
25
26
27
28

1 e. Any other relief deemed appropriate by this Honorable Court.

2
3 **DEMAND FOR JURY TRIAL**

4
5 PLEASE TAKE NOTICE that Plaintiff, JUAN PEREZ, demands a jury trial
6 in this case.

7 RESPECTFULLY SUBMITTED,

8
9 By: /s/ Amy Lynn Bennecoff Ginsburg
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28 Dated: December 16, 2016